MISCELLANY.

SYNOPSIS OF VIRGINIA CHILD LABOR ACT.

Child under Ten Years of Age.—The act provides that no boy under ten years of age shall, in any city of five thousand population or more, distribute, sell, expose or offer for sale, newspapers, magazines or other periodicals, in any street or public place.[1]

Child under Fourteen Years of Age.—The act provides that no child under the age of fourteen years shall be employed, permitted or suffered to work in any factory,[2] workshop,[3] mine, mercantile establish-

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1. March 27, 1914, Acts 1914, p. 671. This act is constitutional as a proper police regulation. "The law is well settled that legislation which restricts the number of hours of labor which may be performed in one day in certain occupations declared detrimental or considered detrimental to the health or safety of the laborer is a valid exercise of the police power of the state. Lochner *v.* New York, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937, 3 Ann. Cas. 1133; Holden *v.* Hardy, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. Ed. 780; Ex parte Kair, 28 Nev. 425, 82 Pac. 453, 6 Ann. Cas. 893; State *v.* Livingston Concrete Bldg. & Mfg. Co., 34 Mont. 571, 87 Pac. 980, 9 Ann. Cas. 204. Occupations that may not come within such rule as detrimental or dangerous to health and safety as it affects male operatives may come within the rule when female operatives are affected, and thus become a valid subject of legislation under the police power of the state; that is, the legislation fixing the number of laboring hours of female employees may become valid legislation, but, when applied to males, the legislation would be invalid. See Muller *v.* Oregon, 208 U. S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551, 13 Ann. Cas. 957; Riley *v.* Massachusetts, 232 U. S. 671, 34 Sup. Ct. 469, 58 L. Ed. 788." State *v.* Dominion Hotel (Ariz.), 151 Pac. 958. But a law of Massachusetts which provided that employees in and about steam railroad stations "shall not be employed for more than nine hours in ten hours' time, the additional hour to be allowed as a lay-off," was declared unconstitutional by the Supreme Court of that state, in a case not yet reported. See post, note 7.

2. The word "factory" is a contraction of "manufactory," which is a building or place appropriated to the manufacture of goods. Schott *v.* Harvey, 105 Pa. 222.

A factory is a building, the main or principal design or use of which is a place to produce articles, as products of labor. Insurance Co. *v.* Brock, 57 Pa. 74.

Gen. Stats. Minn. 1894, § 2264, provides that a factory embraces a place where printing is carried on. This is, as is obvious, statutory.

Is the editorial room of a publishing house, in another department of which printing and binding are done, a factory? This question has arisen in this state, and by a police justice was decided in the negative. This act must be construed according to the terms used and, being penal, must be construed strictly. The places of employment are named in specific terms, without the usual words "or other," or similar general terms. It must be imputed to the legislature that they were aware of other occupations and places of employment than those enumerated, and having such places in mind, must be understood as intending to omit them from the operation of the act.

3. Under the express provisions of Laws of Ill. 1893, p. 99, the

ment,[4] laundry, bakery, brick or lumber yard; as a messenger for a telegraph, telephone or messenger company, in the distribution, transmission or delivery of goods or of messages, in cities having a population of five thousand or more; [5] nor during school hours nor after seven in the evening, in the distribution, transmission or sale of merchandise.

Child under Sixteen Years of Age.—No child under the age of sixteen shall be employed, permitted or suffered to work in, about or in connection with any establishment or occupation named above, except messenger for telegraph, telephone or messenger company, unless the person, firm or corporation employing such child procures and keeps on file and accessible to any inspector of factories, a certificate of employment and two lists of the names and ages of all children, one on file and one posted near the principal entrance. The certificate shall be issued only by a notary public of the city or filed where the child is employed, upon application of any person or parent, guardian or custodian. The certificate [6] shall not issue except upon one of the following proofs that the child is fourteen years of age: (1) Birth certificate, (2) Certificate of baptism, (3) School record or other satisfactory documentary evidence, (4) Affidavit of parent, guardian or custodian.

No child under sixteen shall be so employed, etc., (1) for more than six days in any one week, (2) for more than ten hours in any one day, (3) nor before the hour of seven in the morning nor after the hour of nine in the evening.

No girl under sixteen shall, in any city of five thousand population or more, distribute, sell, expose or offer for sale newspapers, magazines or other periodicals, in any street or public place.[7]

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words "manufacturing establishment, factory, or workshop," wherever used in such act, which declares that no female shall be employed in any manufacturing establishment, factory, or workshop, etc., more than eight hours in any one day, etc., shall be construed to mean any place where goods or products are manufactured, or repaired, cleaned, or sorted, in whole or in part, for sale or for wages. Ritchie *v.* People, 155 Ill. 98, 40 N. E. 454, 455, 29 L. R. A. 79, 46 Am. St. Rep. 315. 8 Words & Phrases, 7525.

4. "'Mercantile' is defined by Webster as 'pertaining to merchants or the business of merchants.' In re San Gabriel Sanatorium Co. (U. S.), 95 Fed. 271, 273."

The term "mercantile establishment" may be said to refer to a place where the buying and selling of articles of merchandise as an employment is conducted. "It implies operations conducted with a view of realizing the profits which come from skillful purchase, barter, speculation, and sale." Graham *v.* Hendricks, 22 La. Ann., 523.

5. Acts 1914, p. 671.

6. In the issuance of this certificate the notary acts judicially and his certificate when issued affords protection to the employer, although issued on improper proof. The employer need not look back of the certificate.

7. The last provision is not a restriction upon the employment of

Child under Eighteen Years of Age.—In cities of five thousand or more, no child under eighteen years of age shall be employed, permitted or suffered to work as messenger for a telegraph, telephone or messenger company, in the distribution, transmission or delivery of goods or messages, between the hours of ten in the evening and five in the morning.[8]

Child under Twenty-One Years of Age.—No male person under twenty-one shall be employed in any capacity in any place, except in hotels and mercantile establishments in the country, where intoxicating liquors are manufactured, bought, sold, packed or shipped.[9]

Exceptions to Act.—Nothing in the act shall prevent a parent from working his child in any place owned or operated by him. The act does not apply to factories engaged in packing fruit and vegetables, between July first and November first of each year, nor does it apply to mercantile establishments in towns of less than two thousand inhabitants or in country districts.[10]

Release from Operation of Act.—Upon petition of the parent, guardian or other person interested in the child to the circuit or corporation court, the court may, for good cause shown, release any child between the ages of twelve and fourteen years, or the parent or guardian of such child, from the operation of the act.

Prosecution and Punishment.—Any employment contrary to the provisions of this act shall be prima facie evidence of guilt, both as to the employer and the parent or guardian of the child.

Any owner, superintendent, overseer, foreman or manager who shall knowingly employ or permit any child to be employed contrary to the provisions of the act, in any factory, workshop, mencantile establishment or laundry,[11] with which he is connected, or any parent or guardian, who allows any such employment of his child or ward,

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the child, but a restriction upon the child's occupation. The exception as to buildings owned or operated by the parent does not apply for that reason.

8. Acts March 27, 1914, Acts 1914, p. 671.

9. Act of March 20, 1914, Acts 1914, p. 263.

As far as child labor is concerned, this is the only provision of the Act of March 20 not repealed by the act of March 27.

10. This last exception mentions mercantile establishments only. The act is therefore effective in small towns and country districts as to factories, workshops and laundries.

11. The penal provision of the act does not mention the owner, etc., of a mine, bakery, brick or lumber yard. As a penal law which provides no penalty is void, the act is inoperative as to employment of children in these establishments.

"Of all the parts of a law the most effectual is the vindicatory. For it is but lost labor to say, 'do this, or avoid that,' unless we also declare, 'this shall be the consequence of or non-compliance.' We must therefore observe, that the main strength and force of law consists in the penalty annexed to it." Blacks. Com. vol. I, p. 56.

shall upon conviction of such offense be fined not less than $25 nor more than $100.[12]

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12. An information charging defendant with having required female employees to work more than eight hours a day may, in a single count, allege any number or all of the conditions enumerated in the statute under which the offense may be committed, any one of which, if proven, will sustain a conviction. Hotchkiss *v.* D. C., — Ct. of App. of D. C. —, Washington Law Reporter, vol. xliii, p. 706.

T. B. B.

IN VACATION.

Physician or Babies Mixed—Which?—A famous Chicago lawyer once had a singular case to settle. A physician came to him in great distress. Two sisters, living in the same house, had babies of equal age, who so resembled each other that their own mothers were unable to distinguish them when they were together. Now it happened that by the carelessness of the nurse the children had become mixed, and how were the mothers to make sure that they received back their own infants?

"But, perhaps," said the lawyer, "the children weren't changed at all."

"Oh, but there's no doubt that they were changed," said the physician.

"Are you sure of it?"

"Perfectly."

"Well, if that's the case, why don't you change them back again; I don't see any difficulty in the case."—San Francisco Argonaut.

Twilight Zone between Buttermilk and Brandy.—"If the purpose of the ordinance is to repress the sale of intoxicating drinks (which it evidently was), we find that it is not in harmony with the statutes of the state, and therefore must give way. If it has some other purpose it is so obscure that ordinary perception can not discover it, and it can not be referred by reasonable construction to any of the chartered powers of the corporation. It therefore becomes an invasion of the natural rights and inherent personal liberty of the citizen. Nor can we answer affirmatively the inquiry of the Attorney-General, 'But is there not somewhere between the buttermilk of the "pure in heart" and the brandy of the "morally stunted" a "twilight zone," and does not the drink sold by the defendant lie within this zone?' We are of opinion that the entire zone has been pre-empted by the statutes of